Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review of the	)	CC Docket No. 02-39
Equal Access and Nondiscrimination Obligations	)	
Applicable to Local Exchange Carriers	)	
	)	

COMMENTS OF BELLSOUTH

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. and its wholly owned affiliated companies ("BellSouth"), submits these Comments in response to the Commission's *Notice of Inquiry* (FCC 02-57) released on February 28, 2002 ("*NOI*") in the above-referenced proceedings.

In the *NOI*, the Commission seeks comment on "the existing equal access and nondiscrimination obligations of BOCs, which include the line of cases stemming from the MFJ."[1] The task of wading through the equal access requirements mandated by the Modification of Final Judgment ("MFJ") and its progeny is daunting at best.[2] From BellSouth's reading of the MFJ, it appears that most of the equal access and nondiscriminatory obligations were time-sensitive and have been satisfied for many years. Notwithstanding, the creation of an equal access requirement for the Bell Operating Companies ("BOCs") is found in Section II(A) of the MFJ, and provides:

> A. Subject to Appendix B, each BOC shall provide to all interexchange carriers and information service providers exchange access, information access,

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1 *NOI*, ¶ 12.

2 *See United States v. American Tel. and Tel.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

> and exchange services for such access on an unbundled, tariffed basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates.[3]

The equal access requirements were meant to abolish a "substantial disparity in dialing convenience" caused by end-users having to dial a multiple-digit access code to access interexchange carriers other than AT&T.[4] As noted by the Court, "A customer can place an interexchange call through AT&T by dialing 1 or 0 plus a normal ten-digit number, [FN omitted] for a total of eleven digits. If a customer wishes to place a call through any other interexchange carrier, however, he must dial a twelve- or thirteen-digit access code plus the ten-digit number, for a total of twenty-two or twenty-three digits." [5] This equal access was to be phased-in as the BOC end offices acquired the necessary switching capability according to the schedule in Appendix B, Section (A)(1) of the MFJ, which provides:

> As part of its obligation to provide non-discriminatory access to interexchange carriers, no later than September 1, 1984, each BOC shall begin to offer to all interexchange carriers exchange access on an unbundled, tariffed basis, that is equal in type and quality to that provided for the interexchange telecommunications services of AT&T and its affiliates. No later than September 1, 1985, such equal access shall be offered through end offices of each BOC serving at least one-third of that BOC's exchange access lines and, upon bona fide request, every end office shall offer such access by September 1, 1986.[6]

This description of equal access is consistent with the Commission's findings that equal access allows end users to access facilities of a designated interexchange carrier by dialing "1" only.[7] The Commission also noted that equal access "is defined as that which is 'equal in type, quality, and price to that provided to AT&T and its affiliates'" and has been referred to as

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3 *Id.* at 227.

4 *United States v. Western Elec. Co., Inc.*, 578 F. Supp. 668, 670 (D.D.C. 1983).

5 *Id.*

6 *United States v. American Tel. & Tel.*, 552 F. Supp. at 232-33.

7 *In the Matter of Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145 Phase I, *Memorandum Opinion and Order*, 101 FCC 2d 911, 911, ¶ 1 (1985).

Feature Group D access, easy dialing and 1+ service.[8] Making equal access available in every end office resulted in subscribers being faced with a choice of how to route their interexchange calls. As noted by the Court, the choice was either: "(1) he may dial a four-digit carrier access code ("10XX") instead of the twelve-to-thirteen digits now required,[ ] or (2) he may predesignate a primary interexchange carrier, that is, he may opt for a switching arrangement by which his interexchange calls will be routed automatically to the selected carrier."[9] In order to address a number of issues that arose concerning the implementation of the predesignation process, the Court put in place several requirements concerning subscriber notification.[10] All but one of these requirements expired ninety (90) days following an equal access conversion at an end office. The remaining requirement is in place today, and provides:

> Following the ninety-day period referred to above, each Operating Company shall again allow a predesignation free of charge [ ] and provide information similar that required above, at the time a customer receives new service if he still has not designated an interexchange carrier at that time. The receipt of new service by a customer means that (1) he receives service from the particular Operating Company for the first time, or (2) he moves to another location within the Operating Company area.[11]

The Court's rationale for this requirement was that "[i]t appears that some twenty percent of the telephone customers receive new service annually. . . . Thus, as a result of these procedures, the advantage accruing to AT&T from the grant of the Ameritech motion should be largely

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8 *Id.* at 912, n.2.

9 *United States v. Western Elec. Co., Inc.*, 578 F. Supp. at 670 (footnote omitted).

10 *Id.* at 676-77.

11 *Id.* (footnotes omitted).

dissipated in a relatively short period of time."[12] BellSouth submits that AT&T's advantage has dissipated, along with the need for marketing restrictions on new customers.

Clearly, the equal access and nondiscrimination mandates were designed to prevent the BOCs from discriminating in favor of AT&T (the dominant carrier) and against the new carriers attempting to compete against AT&T in the interexchange market. In the twenty years that have passed since the equal access and nondiscrimination mandates were imposed, the interexchange market has experienced significant change. For instance, AT&T is no longer the dominant carrier, but is simply one of many interexchange carriers competing in the market. Also, enough time has elapsed that there is no longer any rational basis upon which to base a concern that BellSouth, or any BOC, would discriminate against an interexchange carrier in favor of AT&T. Thus, the concerns expressed by the Courts and the Commission at the time of divestiture are no longer present and the need for equal access and nondiscrimination mandates has passed.

The competitive landscape of the early 1980s has also changed significantly in that there are currently a significant number of competing providers in the local markets. These providers are able to offer their own (or another carrier's) interexchange service on an exclusive basis without the same marketing limitations as the BOCs. This disparity in regulation will undoubtedly impact the BOCs that have in-region interLATA relief and prevent them from competing on an equal basis. At a minimum, when the Commission determines that local markets in a given state are irreversibly open to competition and that the BOC can offer interLATA services in that state, the Commission should remove any restrictions on the BOCs ability to market its interLATA services. In fact, Section 272(g)(3) explicitly allows the joint marketing and sale of services between a BOC and its Section 272 affiliate.

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12 *Id.* at 677, n.48.

To the extent that the Commission is concerned about a BOC discriminating between interexchange carriers, there are other provisions of the 1996 Act through which the Commission can prevent such behavior. For instance, BellSouth currently provides out-of-region interexchange services through an affiliate, as that term is defined in Section 272 of the 1996 Act. There are a number of nondiscrimination safeguards contained within Section 272(c) that preclude a BOC from discriminating in favor of its affiliate in the "provision or procurement of goods, services, facilities, and information, or in the establishment of standards." Thus, the Commission could exercise its authority under Section 272 to prohibit discriminatory BOC activities. Similarly, the Commission has authority under Sections 201 and 202 of the 1996 Act to regulate common carriers and preclude them from discriminating in their charges, practices, classifications, regulations, facilities, or services. To the extent that a BOC is providing interLATA services as a common carrier, the Commission can utilize the provisions of Sections 201 and 202 to monitor BOC activities.

The Commission also seeks comments on how it should go about changing or eliminating any existing equal access and nondiscrimination requirements.[13] Section 251(g) provides that the equal access and nondiscriminatory interconnection restrictions remain in effect until "explicitly superseded by regulations prescribed by the Commission." Thus, as long as it is done explicitly, the Commission can conclude in this proceeding that the equal access and nondiscriminatory interconnection obligations that preceded the 1996 Act are simply no longer necessary. As an alternative, the Commission could rely on Section 10 of the 1996 Act to change or eliminate any existing equal access and nondiscrimination requirements. Proceeding under Section 10, however, would require the BOCs to file petitions consistent with Section

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13 *NOI*, ¶10.

10(c) and for the Commission to conduct the analysis and make findings consistent with Section 10(a)(1)-(3).[14]

In conclusion, BellSouth submits that the equal access requirements and marketing restrictions have outlived their usefulness and should be eliminated.

Respectfully submitted,

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[14] 47 U.S.C. § 160(a)(1)-(3).

CERTIFICATE OF SERVICE

I do hereby certify that I have this 10th day of May 2002 served the parties of record to this action with a copy of the foregoing **BELLSOUTH COMMENTS** by Electronic Mail.

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